

16. **ISSUE: Re: MACE: THE CASE AGAINST SUPERVISOR DON STAPLEY;  
HENDERSHOTT INAPPROPRIATELY ORDERED STAPLEY'S RE-ARREST --  
SUBJECT: HENDERSHOTT  
(Munnell Memo p. 34)**

**Chief Deputy David Hendershott**

H11A. Allegedly, Chief Deputy David Hendershott inappropriately ordered the re-arrest of Supervisor Don Stapley when probable cause was missing or deficient.

**MUNNELL'S WRITTEN ACCOUNT**

**The case against Supervisor Don Stapley; Hendershott orders his arrest**

As the newly assigned Commander of the MACE unit, Lieutenant Rich Burden took it upon himself to carefully review the original Stapley indictment. After this review, Burden came to the conclusion that the case was weak and that multiple charges had been "stacked" against Stapley. Burden expressed his concerns to Chief Hendershott during the calls in which Hendershott threatened to "machine gun" him and the other command staff associated with the MACE unit. His assessment was so alarming that Hendershott ordered Burden and his Detectives to review the Stapley case the entire previous weekend, burning nearly one-hundred (100) hours of overtime.

On September 21, 2009, only days after all criminal charges were dismissed against Stapley, Hendershott ordered the probable cause arrest of Stapley on new fraud charges related to his position as President of National Association of Counties (NACo). MCSO had never made a probable cause arrest in any "white collar" case prior to that time and our standard pattern and practice was to work closely with the prosecutor (this time the Yavapai County Attorney's Office). This last minute decision to arrest Stapley on new charges was inappropriate for several reasons. First, the case had already been submitted to the Yavapai County Attorney for review. Second, the Sergeant Rich Johnson, the supervisor of the MACE unit did not believe the case was completed and ready for prosecution. Third, the outside appearance was that the timing of the arrest was connected to the previous dismissal. The sole reason given for the urgency of conducting a probable cause arrest was claimed existence of victims who deserved justice, which is debatable at best.

This arrest took place after Chief Hendershott contacted Sergeant Johnson on the Saturday morning prior to the Monday arrest, ordering him to make the probable cause arrest. Hendershott also informed Johnson that he was not to call Deputy Chief Terry Young (Johnson's Bureau Chief) to discuss the matter. Johnson, believing the case was not ready because there was still additional investigative follow-up to be completed and the arrest was not coordinated with the Yavapai County Attorney, called Chief Young in a panic to discuss the situation. Ultimately, a decision was made to comply with Chief Hendershott's decision because probable cause did exist and the arrest was made the following Monday.

This unorthodox arrest created a great deal of negative publicity. In the court of public opinion, that arrest appeared to be an abuse of power, exercised for political purposes only. As a result of the willful mishandling of the case, the improper probable cause arrest, and the subsequent attempt to hire of out-of-state attorneys as special prosecutors, it well may be that a successful prosecution of Supervisor Don Stapley will be very difficult, if not impossible.

In addition to these examples of Hendershott's misconduct, there are other acts of misconduct that I will not disclose related to the FBI investigation because they are currently under criminal

1 investigation with that agency and therefore I will not include examples or provide the names of  
2 the employees involved at this time.  
3

#### 4 **NARRATIVE SUMMARY**

5

6 In September 2009, the criminal charges against Supervisor Don Stapley were  
7 dismissed. On September 21, 2009, Hendershott ordered the probable cause arrest of  
8 Stapley on new fraud charges related to his position as President of National  
9 Association of Counties (NACo). Hendershott contacted Sgt. Johnson, who called  
10 Deputy Chief Young and the decision was made to comply with Hendershott's order.  
11 Munnell notes several reasons that the arrest should not have been made.  
12

#### 13 **WITNESS ACCOUNTS**

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##### 15 **Frank Munnell**

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17 This information comes to Munnell from another source, he has no firsthand knowledge  
18 of these events. Munnell's account is found on pp. 61-62 of Exhibit II 28b.  
19

##### 20 **Rich Johnson**

21

22 Sgt. Johnson said that there is an inaccuracy in Munnell's memo and said that he  
23 received a call with directives from Hendershott on Friday, not Saturday, that he needed  
24 to arrest Don Stapley on new charges, referring to NACo and the mortgage  
25 investigation, but Sgt. Johnson, as the supervisor of the MACE unit, did not believe the  
26 case was complete and ready for prosecution. Sgt. Johnson further confirmed what  
27 Munnell wrote and agreed that the timing of the arrest appeared to be connected to the  
28 dismissal of the charges in the first case against Stapley. Johnson, however, called  
29 Young because he was concerned that the case still needed additional investigation.  
30 Johnson recalled that he may have even spoken with Brandon Luth before he called  
31 Young.  
32

33 The next day, Sunday, Johnson spoke with Young and again, who said he had  
34 consulted with Schneidmiller, who told Young that probable cause did exist and  
35 instructed Johnson to move forward with the arrest, which Johnson explained transpired  
36 as follows.  
37

38 A: So, subsequently after that, you know, that decision was made to go ahead  
39 with it so I tried to keep it as small a group as possible. One, I didn't want it in  
40 the media. I know that's not going to happen with this office. But, I didn't want  
41 it in the media. And I wanted it very low key and to be done at his house so it  
42 wouldn't disturb anyone, there wouldn't be any public watching. Doesn't matter  
43 what really happened but there was surveillance done there. Our surveillance  
44 guys didn't see him pull out until after it was too late. Weren't able to make, I  
45 wanted to make the traffic stop right there at the house so that his wife can take

1 the car and that, you know, it'd be all low key and no one would know. And just  
2 go take care of it. Well thinking, now that the guys lost him, I said, he's going to  
3 work. He's got a meeting this morning. Go get, wherever he is, get ahead of him.  
4 Get to the garage. And you know he's going to park in the garage wherever he  
5 parks. Make the stop there. We don't want to do it inside the building where  
6 people are. And so we kept it as low key as possible. Unfortunately, you know,  
7 more folks than just ours got involved, you know, the county court security came  
8 out, and I wouldn't say there was a struggle, but there was, you know, hey, what  
9 are you doing here? The Deputies that arrested him said, hey, this is a law  
10 enforcement function, back-off. Ultimately they did. And there were no cameras  
11 around, other than, you know, the surveillance cameras. There was no media. (p.  
12 59, Exhibit II20)

13  
14 According to Sgt. Johnson, there was no arrest warrant, but they were making a  
15 probable cause arrest based on the information that had been learned at that point in  
16 the investigation. Sgt. Johnson continued to express his concerns with his position in  
17 MACE. He said that he asked for a transfer, but he was not transferred until MACE was  
18 shut down in September 2010.

19  
20 A: So you understand. You didn't ask me this part and it's a very critical part  
21 I think to your investigation. When Chief Young took over [in September 2009]  
22 he had a meeting with me. Had a meeting with Brandon separately. And the very  
23 first thing Chief Young says to me is hey, nice to meet you. I understand you  
24 want a transfer. And I said, I do. And he goes, I understand. I think the quote  
25 was, anywhere but here. And I said, well, that's pretty much true. And he asked  
26 why and I explained it. And basically it's the pressure being there. It's the  
27 constant micro-managing. It's the constant bombardment with a bazillion things  
28 to do and, you know, no time. And I said, I'm done. I can't do it. And he goes,  
29 well, I can't guarantee you it will be today, six weeks, six months, but hang in  
30 there, we'll get you going. Just so you understand where my mind set was. And  
31 he took over. I don't know, a matter of a couple weeks, a month, before the  
32 Stapley arrest. It wasn't very far away. (p. 60, Exhibit II20)

### 33 34 **Brandon Luth**

35  
36 Sgt. Luth explained his involvement in the second arrest of Don Stapley. According to  
37 Luth, Judge Fields had already dismissed all the misdemeanors against Stapley and on  
38 a Friday, Yavapai County had just made a decision to dismiss the felonies pending the  
39 appeal. The next day, Saturday, Rich Johnson called Sgt. Luth and told him that  
40 Hendershott wanted Stapley arrested on Monday. Sgt. Luth pointed out to Johnson that  
41 it was going to look like retaliation because the felonies had just been dismissed on  
42 Friday. Johnson explained to Luth that Hendershott wanted it done and had told  
43 Johnson to involve as few people as possible. Johnson interpreted this statement as a  
44 order to not even tell Chief Young, Johnson and Luth's supervisor at the time.  
45

1 Luth and Johnson discussed the situation and weighed their options; they could  
2 proceed with an arrest, which they felt was a poor decision, or they could notify their  
3 chain of command, Terry Young, to get his advice and input. They decided to call Chief  
4 Young to have Young tell Hendershott that they were not going to be involved in the  
5 arrest of Don Stapley on Monday. Johnson called Chief Young and they discussed the  
6 arrest, and Young was supportive of the arrest. Johnson called Luth back and told him  
7 that, based on Young's meeting the prior Thursday or Friday with Polk, Arpaio and  
8 Hendershott, it appeared that the arrest was appropriate. The arrest was affected on  
9 Monday.

10  
11 A. So, Rich calls Young, I wasn't involved in the call, and he calls back a  
12 little while later and says, well, I talked to Young and he kind of walked through  
13 it and, you know, why don't you want to arrest him, is it because of who he is,  
14 you know, do you have probable cause, well, yeah, we have probable cause, what  
15 are you worried about, is it a lawful order, you know, cause all we knew at that  
16 point is the case had been dismissed, we didn't know anything about the meeting.  
17 I knew that there had been a meeting, but we didn't know what had happened at  
18 that meeting on that Thursday or Friday before with Polk and Arpaio and  
19 Hendershott, and I think it was Thom, I don't know if Thomas was there, but  
20 anyway, there had been that meeting, but we didn't know what had occurred.  
21 Basically, we found out later, it's Polk's testimony that she had told them that the  
22 Stapley case is good, we just need to do a couple more subpoenas and pull some  
23 more information together. The Mary Rose case is bad, we're not going  
24 anywhere with that, I think is what she told them, there was no, there's no case.  
25 And, so, we didn't know that yet at that point and so, we're like well, it's not  
26 unlawful, it's not unethical, it's not illegal based on what we know, we don't want  
27 to do it because of who's involved, what the fall out's going to be, but it's an  
28 order from our Chief Deputy, now's not the time to fall on our sword, is basically,  
29 what Young helped us come with the decision towards. So, Rich called me back,  
30 we discussed it and I still didn't want to do it, but Monday rolls around and  
31 basically set up an arrest where we, we had two sets of Detectives in two cars  
32 watching the entrance to his neighborhood. He ultimately came out after, after  
33 some limited surveillance and got away from the guys and we had to chase off  
34 after him and they barely caught up to him at the parking garage downtown. And  
35 they went in and they, they affected the arrest. (pp. 40-41, Exhibit II25)

36  
37 When Don Stapley was arrested, he asked the arresting Officers to let him speak with  
38 Rich Johnson, as Rich had interviewed Stapley around the time of the first indictment.  
39 Johnson told the Officers to take Stapley to the jail and said that he would speak with  
40 him there, as he did not want to "inflame the situation." Once they reached the jail, Luth  
41 and Johnson still did not speak with Stapley, but told the jail Commander who Stapley  
42 was and told him to treat Stapley with respect, but to not give him special treatment.

43  
44 Johnson and Luth then returned to their office and a half hour later, Lisa Aubuchon  
45 "sneaked" into their office, trying to avoid being seen by a paralegal who worked for Mel

1 Bowers, a special prosecutor who worked for Polk at the time. Aubuchon told Luth and  
2 Johnson that she did not want the paralegal to see her because it was not public that  
3 the County Attorney's Office was taking the case back. Aubuchon told Johnson and  
4 Luth that they needed to put the case together so they could move forward.

5  
6 Sgt. Luth later learned from Aubuchon's testimony in the Mary Rose Wilcox case that  
7 Chief Hendershott did not like the way that Polk was preventing them from moving  
8 forward on the Stapley case, by requiring additional investigation before proceeding, so  
9 Hendershott, who wanted the case back in front of Andrew Thomas, orchestrated the  
10 probable cause arrest so that Stapley was in custody, requiring the prosecutor to review  
11 the case.

12  
13 **Don Schneidmiller**

14  
15 Schneidmiller knows about the circumstances because on this particular weekend,  
16 Terry Young called him several times, and was bouncing off Schneidmiller what to do  
17 with Hendershott's orders to re-arrest Stapley. Terry Young, according to  
18 Schneidmiller, is very bright and experienced, and for Young to call Schneidmiller with  
19 concerns was very alarming to Don. Basically, Terry had expressed concerns about  
20 whether probable cause existed for the arrest, and he was also concerned that  
21 Hendershott had begun to bypass him and start to directly call his subordinates,  
22 including Rich Johnson and others. Terry felt that was Hendershott's way of avoiding  
23 Deputy Young and resistance that Terry would have offered to Hendershott's  
24 instructions. Terry Young also indicated that Rich Johnson had called him about the re-  
25 arrest of Stapley, and furthermore told Young that Hendershott had told Johnson not to  
26 tell Young what was going on. Johnson, however, decided to call Chief Young because  
27 Terry was in the chain of command.

28  
29 **Terry Young**

30  
31 Young's information about this issue really is based on discussion that he had with  
32 Sergeant Rich Johnson in MACE. Young's comments were as follows.

33  
34 A: I have no idea what review process went into or discussions or strategy  
35 about deciding to make the arrest. I got a call from Rich Johnson on a weekend,  
36 saying, do you know about the Chief wanting us to arrest Stapley on Monday?  
37 No. He goes, okay, well, he told me not to talk to anybody about this, and he  
38 goes, so keep it, you know, just between us boys. He said, I don't know if that  
39 includes you or doesn't include you. I said, well, you know, it's tough for me to  
40 say I wasn't part of the discussion, but ...

41  
42 Q: Well, so Rich indicated that Hendershott told him not to talk to anybody  
43 about the decision?  
44

1 A: Yeah. Just keep this between us boys. But we're going to make this arrest  
2 on Monday. And Rich said, I'm kind of uncomfortable with this and I was  
3 hoping we could talk about it. I said, of course. So, through discussion we  
4 decided, 'cause I hadn't even read fully the case. So I said, well, you're the case  
5 agent essentially, or at least your guys are, so you tell me without any hesitation,  
6 do you have probable cause in your case to making this, because if you don't,  
7 there's no need for us to be talking further, we won't do this.

8  
9 Q: You asked Rich that?

10  
11 A: Yeah. And he said, yeah. I mean if you read the case there's probable  
12 cause, but it's a, you know, it's essentially a paper crime and typically we work  
13 with the County Attorney and we get all of the information together and you  
14 know, we still have some Grand jury subpoenas that are out, that we're waiting  
15 for information on, I'd just like to get more of this information together before we  
16 actually physically arrest the guy, and some of it is just, you know, standard  
17 typical investigative thought process and another part of it is you know, this guy's  
18 a Sergeant, and he's got bottom level Deputies working for him and he's being  
19 asked to go arrest a supervisor, and that's, you know, kind of an uncomfortable  
20 thing, even if you've got all that stuff together, much less not being at a point  
21 where you feel like you're actually ready to yet. So I said, okay. So he said,  
22 should I call the Chief and talk to him about it or would you do it. And I said, I'm  
23 happy to call him for you, as long as you understand, you know, you guys had  
24 developed this kind of little confidential relationship and if you feel like it's going  
25 to create grief for you, that I call him, and now he's going to know you've shared  
26 with me, do you feel like he didn't want you to do that. I don't want to put you in  
27 that kind of position, but at the time same time, you shouldn't have to talk to him  
28 about these things, so, you tell me Rich, I'm here for you. So he says, let me talk  
29 to Brandon about it, he was the other Sergeant. I said, well, you guys ...

30  
31 Q: Brandon Luth?

32  
33 A: Correct. So they spoke and called me back and said, would you mind  
34 calling him? Sure. So I called the Chief Deputy. I said, hey, we're just trying to  
35 strategize how Monday is going to go, make sure we got all this (inaudible)  
36 together, that kind of thing. But the guys have some concerns about this. I don't  
37 know at what level you're at, or if this is open for discussion, but there's some  
38 information they'd like to get their hands on before they go and make this arrest.  
39 I don't remember the details of what I got back, other than yeah, well I appreciate  
40 what you're saying but we're going to arrest him on Monday. Okay. (pp. 41-42,  
41 Exhibit II45a)

42  
43 David Hendershott  
44

1 Hendershott indicated that he ordered the re-arrest of Stapley after speaking with  
2 Sheriff Arpaio. He believes that there was probable cause on theft of monies and fraud.  
3 Hendershott claimed that the case had not already been submitted to the Yavapai  
4 County Attorney's Office for review. Hendershott provided an extensive explanation,  
5 which is seen on pp. 16-17 of Exhibit II16d. Hendershott further indicated that he would  
6 be surprised that Sergeant Rich Johnson would assert that the case was not ready. He  
7 says that Johnson never told him that the case was not ready. Hendershott's opinion  
8 was that there certainly was probable cause for the re-arrest of Stapley.

9  
10 We then walked through some of the more specific allegations found in the Munnell  
11 complaint in this regard. Hendershott acknowledged that, on a Friday, he had  
12 instructed Sergeant Johnson to arrest Stapley the following Monday. He denies having  
13 any recollection of informing Johnson that Johnson was not to call Deputy Chief Terry  
14 Young to discuss the matter. Terry Young was, according to Hendershott,  
15 Hendershott's "Jimmy Miller fix." Hendershott denies knowing whether Sergeant  
16 Johnson did in fact speak with Chief Young, but he believes that Terry Young was at the  
17 time on vacation.

18  
19 Hendershott did acknowledge that, at the time of the re-arrest of Stapley, there were  
20 "collateral investigations" which in his opinion needed to be done, but those matters  
21 were not applicable to the issues on which Stapley was re-arrested; rather, these  
22 investigations related to a separate, tangential case.  
23